

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. _____

STATE OF INDIANA,)

Plaintiff,)

v.)

LARRY M. FRIEDENSON,)
individually and doing business as)
DISTINCTIVE REMODELING SOLUTIONS,)

Defendant.)

49007060ZPL027060

FILED

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JUL 07 2008

Dana Ann Tolliver
CLERK OF THE
MARION CIRCUIT COURT

COMPLAINT FOR INJUNCTION, COSTS, AND CIVIL PENALTIES

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*, for injunctive relief, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.

2. At all times relevant to this Complaint, the Defendant, Larry Friedenson, individually and doing business as Distinctive Remodeling Solutions., was an individual engaged in business as a home improvement contractor with a principal place of business in Marion County, located at 9125 Behner Brook Court, Indianapolis, Indiana, 46250.

FACTS

3. Since at least September 15, 2005, the Defendant has entered into home improvement contracts with Indiana consumers.

A. Allegations regarding Consumer Pamela Pope's Transaction

4. On or about September 15, 2005, the Defendant entered into a contract with Pamela Pope ("Pope") of Indianapolis, Indiana, wherein the Defendant represented he would unclog a drain and realign a pipe in Pope's basement for a total price of Two-hundred and Twenty Dollars (\$220.00), which Pope paid in full. Attached and incorporated by reference as Exhibit "A" is a true and accurate copy of the contract Pope received.

5. The Defendant failed to include the following information in the contract with Pope:

- a. The telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- b. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- c. The approximate starting and completion dates of the home improvement;
- d. A statement of any contingencies that would materially change the approximate completion date; and
- e. Signature lines for the Defendant or the Defendant's agent and for each consumer who is to be a party to the home improvement

contract with a legible printed or typed version of that person's name placed directly after or below the signature.

6. As the Defendant failed to do any work under the contract, Pope requested a refund.

7. Despite several representations by the Defendant the check was in the mail, Pope has not received a refund.

8. The Defendant was not listed as a contractor in Marion County at the time of contract formation, as required by the *Revised Code of the Consolidated City and County*, Chapter 875, Section 101.

9. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contract formation he would complete the job, within a reasonable period of time.

10. The Defendant has neither performed the work on Pope's home, nor issued a refund to Pope.

B. Allegations regarding Consumer Bridgette Robeson's Transaction

11. On or about October 10, 2005, the Defendant entered into a contract with Bridgette Robeson ("Robeson") of Indianapolis, Indiana, wherein the Defendant represented he would remodel Robeson's bathroom, including the installation of a toilet and plumbing for a vanity sink, for a total price of Six Thousand Seven Hundred and Fifty-five Dollars (\$6,755.00), of which Robeson paid Three Thousand Six Hundred and Forty-two Dollars (\$3,642.00) as a down payment. Attached and incorporated by reference as Exhibit "B" is a true and accurate copy of the contract Robeson received.

12. The Defendant failed to include the following information in his contract with Robeson:

- a. The telephone number and names of any agent to whom consumer problems and inquiries can be directed;
- b. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- c. A reasonably detailed description of the proposed home improvement, or a statement the specifications will be provided to the consumer before the Defendant commences any work and that the home improvement contract is subject to the Consumer's separate written and dated approval of the specifications;
- d. The approximate completion date of the home improvement; and
- e. A legible printed or typed version of the Defendant's name and the consumer's name placed directly after or below their signature.

13. The Defendant failed to obtain the necessary plumbing license prior to any work commencing under his contract with Robeson.

14. The Defendant was not listed as a contractor in Marion County at the time of contract formation, as required by the *Revised Code of the Consolidated City and County*, Chapter 875, Section 101.

15. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contract formation he would perform the work, pursuant to the terms of the contract, within a reasonable period of time.

16. The Defendant has neither completed the work on Robeson's home as represented, nor issued a refund to Robeson.

C. Allegations regarding Consumer Rose Porter's Transaction

17. On or about November 7, 2005, the Defendant entered into a contract with Rose Porter ("Porter") of Indianapolis, Indiana, wherein the Defendant represented he would remodel Porter's bathroom, including the installation of a toilet and hot water heater, for a total price of One Thousand Seven Hundred and Sixty Dollars (\$1,760.00), of which Porter paid Eight Hundred and Eighty Dollars (\$880.00) as a down payment. Attached and incorporated by reference as Exhibit "C" is a true and accurate copy of the contract Porter received.

18. The Defendant failed to include the following information in the contract with Porter:

- a. The address of the residential property that is the subject of the home improvement;
- b. The Defendant's address and each of the telephone numbers and names of any agents to whom consumer problems and inquiries can be directed;
- c. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- d. A reasonably detailed description of the proposed home improvement, or a statement the specifications will be provided to the consumer before the Defendant commences any work and that

the home improvement contract is subject to the Consumer's separate written and dated approval of the specifications;

- e. The approximate starting and completion dates of the home improvement; and
- f. A legible printed or typed version of the Defendant's name and the consumer's name placed directly after or below their signature.

19. The Defendant failed to obtain the necessary plumbing license prior to any work commencing under his contract with Porter.

20. The Defendant was not listed as a contractor in Marion County at the time of contract formation, as required by the *Revised Code of the Consolidated City and County*, Chapter 875, Section 101.

21. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contract formation he would perform the work, pursuant to the terms of the contract, within a reasonable period of time.

22. The Defendant has neither completed the work on Porter's home as represented, nor issued a refund to Porter.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

23. The services described in paragraphs 4, 11, and 17 are "home improvements" as defined by Ind. Code § 24-5-11-3.

24. The transactions referred to in paragraphs 4, 11, and 17 are "home improvement contracts" as defined by Ind. Code § 24-5-11-4.

25. The Defendant is a "supplier" as defined by Ind. Code § 24-5-11-6.

26. By failing to provide the consumers with completed home improvement contracts, containing the information referred to in paragraphs 5, 12, and 18, the Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

27. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 26 above.

28. The transactions referred to in paragraphs 4, 11, and 17 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

29. The Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

30. The Defendant’s violations of the Indiana Home Improvement Contracts Act, referred to in paragraphs 5, 12, and 18, constitute deceptive acts by the Defendant, in accordance with Ind. Code § 24-5-11-14.

31. The Defendant’s representation to consumers the consumer transactions had sponsorship, approval, performance, characteristics, accessories, uses, or benefits they did not have, when the Defendant knew or reasonably should have known the transactions did not have such, as referenced in paragraphs 4, 11, and 17, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

32. The Defendant’s representation he would issue a refund to Pope, when the representation was false and the Defendant knew or reasonably should have known the representation was false, as referenced in paragraph 7 constitutes a violation of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(8).

33. The Defendant’s representations to consumers he would be able to deliver or complete the subject of the consumer transaction within a reasonable period of time,

when the Defendant knew or reasonably should have known he could not, as referenced in paragraphs 9, 15, and 21, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

34. By failing to obtain the necessary plumbing license, or properly listing himself with Marion County, prior to engaging in, or soliciting to engage in, consumer transactions, as referenced in paragraphs 8, 13, 14, 19, and 20, the Defendant violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-10(a)(1).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS
OF THE DECEPTIVE CONSUMER SALES ACT**

35. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 34 above.

36. The misrepresentations and deceptive acts set forth in paragraphs 4, 7, 8, 9, 11, 13, 14, 15, 17, 19, 20, and 21 were committed by the Defendant with the knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Larry Friedenson, individually and doing business as Distinctive Remodeling Solutions, enjoining the Defendant from the following:

- a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:
 - i) The name of the consumer and the address of the residential property that is the subject of the home improvement;

- ii) The name and address of the Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- iii) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- iv) A reasonably detailed description of the proposed home improvements;
- v) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- vi) The approximate starting and completion date of the home improvements;
- vii) A statement of any contingencies that would materially change the approximate completion date;
- viii) The home improvement contract price; and
- ix) Signature lines for the Defendant or the Defendant's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

- b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;
- c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;
- d. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should have known it does not have;
- e. representing, expressly or by implication, the consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the Defendant knows or should reasonably know the representation is false;
- f. representing, expressly or by implication, the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot; and
- g. soliciting or engaging in a home improvement transaction without a license or permit required by law.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendant for the following relief:

- a. cancellation of the Defendant's unlawful contracts with consumers, including, but not limited to, those consumers identified in paragraphs 4, 11, and 17, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- c. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- d. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By: 

Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

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Indianapolis, IN 46204
Telephone: (317) 233-3300

Blumberg No. 5138

STATE'S
EXHIBIT

A

PROPOSAL

NO.

SHEET NO.

DATE

PROPOSAL SUBMITTED TO: CITY

WORK TO BE PERFORMED AT:

NAME

AT

CI

PI

ADDRESS

CITY, STATE

DATE OF PLANS

ARCHITECT

Bridgette Robeson

D.R.S. LARRY Friedenson

9125 Behner Brook Ct

IND 615, 46250

701-3683 H. 841-0861

We hereby propose to furnish the materials and perform the labor necessary for the completion of Of. 870-9120

- ① Install tile on wall & Shower
- ② Install Shower Base 32x60 & Drain
- ③ Install Cabinet in Wall (Cabinet to be Provided)
- ④ Install Bull Nose Trim around wall tile base not on Shower tile
- ⑤ Install Shelf in Shower Corner Shelf
- ⑥ Install Sub Floor
- ⑦ Remove Old tile
- ⑧ Install Wood tile & Floor (Cork Packed floor)
- ⑨ Install Frameless Shower (Charmel Handle & Hinges)
- ⑩ Move toilet 3 1/4" inches
- ⑪ Install to Round on Base
- 12 Install Chrome Register Cover
- 13 Install New Shower Head & Spray Cord
- 14 Install New toilet
- 15 Install Trim around Shower Window
- 16 Install 1 Towel Rack 1 Lge & Small Chrome
- 17 Install Vanity Sink Plumbing

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of:

Start work 10/17/05

Dollars (\$ 6755.00)

with payments to be as follows

Down, 3377.50 ① ② ③ ④ ⑤ ⑦ ⑩ ⑬ ⑭

Numbers correspond

to work to be performed

Any alteration or deviation from above specifications involving extra work will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Respectfully submitted

Per Larry Friedenson

Note - This proposal may be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL

From 4/15
LARRY FRIEDENSON N^o 001083

From 4/15
LARRY FRIEDENSON N^o 001083

C-701-3683 Cell H 84458-8/5

Proposed Submitted to: 8/19/20

Name Rose Porter
Street [REDACTED]
City [REDACTED]
State [REDACTED]
Phone [REDACTED]

Street _____
 City _____ State _____
 Date of Plans _____
 Architect _____

[illegible]

Work material is guaranteed to be as specified, and the above work is to be performed in accordance with the drawings and specifications submitted for above work and completed in substantial workmanship in 1967 for the sum of Dollars (\$ 1075.00).
with payments to be made as follows: 50% down \$537.50 10/67
Balance on completion 537.50 12/67

any question in question from
and be considered only upon
change law and where the
service programs or awards
industry and other necessary
communication and public lobby
about associations involving
written work are the become
estimate. All representatives contingent
beyond the control. Owner is
insurance upon above work. Work
relationship to above work to be taken

Paid
Amount submitted
880 Per _____
87760.00

Note—This proposal may be withdrawn by us if not coordinated within _____ days.

ACCEPTANCE OF PROPOSAL

The undersigned hereby accept the conditions of solicitation and of the proposal of the bidder named above.

Permit _____

Signature _____